

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs December 18, 2007

**STATE OF TENNESSEE v. TERRY LYNN BYINGTON**

**Direct Appeal from the Criminal Court for Sullivan County**  
**No. C52,434     Robert H. Montgomery, Jr., Judge**

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**No. E2007-01129-CCA-R3-CD - Filed May 19, 2008**

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Defendant, Terry Lynn Byington, appeals the trial court's order declaring him to be a Motor Vehicle Habitual Offender (MVHO). Defendant argues on appeal that the trial court erred in allowing the petition to continue despite a delay in filing and whether this delay violated his constitutional right to due process under the Fifth Amendment to the federal constitution. After a thorough review of the record, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, and J. C. McLIN, JJ., joined.

Terry Lynn Byington, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilbur, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; Teresa Murray Smith, Assistant District Attorney General, for the Appellee, the State of Tennessee

**OPINION**

**I. Background**

The State filed a petition to declare Defendant an MVHO on August 18, 2006. Defendant filed a motion to dismiss on January 9, 2007. Following a hearing on April 25, 2007, the trial court entered a judgment declaring Defendant an MVHO.

Defendant has three convictions of driving under the influence and one conviction of driving on a revoked license, with the offenses occurring from 1998 through 2002. See T.C.A. § 55-10-603(2)(A)(viii), (xv) (2007). The convictions for these offenses occurred on February 23, 1998, December 10, 2002, and June 27, 2003. While the convictions exceed the five year time period set forth in Tennessee Code Annotated section 55-10-603, the last offense occurred within five years of the first conviction. This Court in State v. Webster, 972 S.W.2d 701 (Tenn. Crim. App. 1998),

held that “any offenses committed within a period of five years thereafter, even if no conviction takes place until later, are included.” Webster, 972 S.W.2d at 703, see T.C.A. § 55-10-604(c). Because Defendant’s last offense occurred on December 20, 2001, it was well within the applicable five-year time period from his first conviction on February 23, 1998.

## **II. Analysis**

### **A. Timeliness of the Filing of the Petition**

Defendant argues that the trial court erred in failing to invoke the doctrine of laches because the District Attorney did not timely file the petition to declare Defendant an MVHO. The record reflects that the District Attorney received notice from the Tennessee Department of Safety sometime after May 23, 2006 of Defendant’s status as a Habitual Traffic Offender (HTO) and filed its petition to declare Defendant an MVHO on August 18, 2006. This resulted in a three-month time period between the notice and the filing. Tennessee Code Annotated section 55-10-606 requires that the District Attorney file the petition “forthwith.”

In order to establish the equitable defense of laches, Defendant must establish an inexcusably long delay in bringing the suit and prejudice to Defendant as a result of the delay. Jansen v. Clayton, 816 S.W.2d 49, 51 (Tenn. App. 1991). There is no transcript or statement of the evidence of the MVHO hearing in the appellate record. Thus, in the instant case, there is nothing in the appellate record showing that the District Attorney received notice or had knowledge of Defendant’s qualifying offenses anytime prior to May 23, 2006 except for allegations in Defendant’s brief. Therefore, there is no evidence that the District Attorney delayed prosecution inexcusably or at all. Further, our legislature’s intent in requiring the District Attorney to file “forthwith” was in order to protect the public from habitual offenders, not to protect the MVHO. State v. Gipson, 940 S.W.2d 73, 75 (Tenn. Crim. App. 1996). As to the second element of the doctrine of laches, Defendant has not shown he was prejudiced by any perceived delay. Lastly, the doctrine of laches lies within the discretion of the trial court and will not be disturbed absent abuse of discretion. Gipson, 940 S.W.2d at 76. Because we conclude that the trial court did not abuse its discretion, Defendant is not entitled to relief as to this issue.

### **B. The Fifth Amendment**

Defendant argues that his right to due process and a speedy trial were violated by the three-month delay in the filing of the petition. This Court has addressed this issue before and determined that MVHO proceedings are civil in nature. See Everhart v. State, 563 S.W.2d 795, 797 (Tenn. Crim. App. 1978). “[An MVHO proceeding] invokes revocation of the privilege of driving, not the deprivation of a property right. Id. It is remedial in nature . . . Under these principles, any complaint about the constitutional validity . . . of the MVHO process must fail.” State v. Sneed, 8 S.W.3d 299, 301 (Tenn. Crim. App. 1999). We see no reason to depart from this precedent; accordingly, Defendant is not entitled to relief as to this issue.

## **CONCLUSION**

For the foregoing reasons, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE